




CLOSED CASE SUMMARY

ISSUED DATE: JULY 31, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0053

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

On February 1, 2023, Named Employee #1 (NE#1) responded to a two-car collision and found the Complainant in a vehicle's driver's seat. Following her arrest for driving under the influence, the Complainant alleged that NE#1 racially profiled her and used unauthorized force.

ADMINISTRATIVE NOTE:

This case was approved for an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees in this case. On March 8, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint & Complainant Interview

On February 3, 2023, NE#1's supervisor, Witness Supervisor #1 (WS#1), submitted a Blue Team report to OPA on behalf of the Complainant. The Complainant alleged that NE#1 engaged in bias-based policing when he arrested her for DUI and used unauthorized force against her.

OPA interviewed the Complainant, who explained that she suffered a concussion and a hand laceration, requiring a cast. The Complainant also suggested the arresting officer was biased because of her race.



B. Computer-Aided Dispatch (CAD) Information

On February 1, 2023, at 9:42 PM, NE#1 and his partner, Witness Employee #1 (WE#1), were dispatched to a vehicle collision at the 400 Block of Seneca Street. Several 9-1-1 callers reported that a Toyota minivan and a Ford Mustang collided. The call remarks were: "2 VEHICLE [Motor Vehicle Collision], [VEHICLE] HAS CRASHED INTO A TREE, SCREENING FIRE." At 7:44 PM, the 9-1-1 call taker updated the dispatch notes, "[Reporting Party] SAYS FORD MUSTANG DRIVER IS HIGH." The caller stated the Ford Mustang ran a red light and described the driver—later identified as the Complainant. At 7:47 PM, NE#1 and WE#1 arrived.

C. Body-Worn Video (BWV)

OPA reviewed relevant BWV, showing NE#1's DUI investigation and the Complainant's arrest. BWV showed the following:

NE#1 arrived at the 400 block of Seneca St. and approached the Complainant's vehicle, which had struck a tree. The Complainant was being aided by Seattle Fire Department personnel. NE#1 interviewed the Complainant, who stated that she and her friend had just left a Capitol Hill bar. The Complainant had difficulty articulating what caused the accident. She generally claimed that another car drifted into her lane but could explain how she struck the tree. The Complainant told NE#1 that she had two drinks and rated her intoxication level at a five out of 10.

The Complainant participated in field sobriety tests (FST) at the scene. NE#1 first asked the Complainant to recite the alphabet from "D" to "U." The Complainant initially answered, "D, D, E, D, E, C, F, A," and then successfully completed the task. NE#1 then administered a Horizontal Gaze Nystagmus (HGN) test to look for involuntary jerking of a subject's eye when gazing to the side. NE#1 instructed the Complainant to keep her head still, but the Complainant repeatedly turned her head. NE#1 then demonstrated the "walk and turn" test. The "walk and turn" test assesses a subject's balance and ability to follow basic instructions. After NE#1 demonstrated the "walk and turn" test, WE#1 approached and informed NE#1 that the Complainant's friend was being transported to a nearby hospital. NE#1 then resumed his attempt to conduct the test. However, the Complainant became distraught about her friend being hospitalized.

NE#1 asked whether the Complainant consented to a portable breath test (PBT). The Complainant declined. When NE#1 asked why not, the Complainant answered, "Because I feel like I can go get her [friend]." After NE#1 repeated that the Complainant's friend was being transported to a hospital, the Complainant walked away and ran towards an ambulance. NE#1 grabbed the Complainant's right arm and ordered her to stop. The Complainant protested while NE#1 handcuffed her. The Complainant attempted to pull away while NE#1 applied handcuffs. The Complainant yelled, "Help me. You're hurting me!"

NE#1 brought the Complainant to SFD personnel to screen her for injuries. A firefighter asked the Complainant, "Do you have any injuries from the collision." The Complainant replied, "No, nothing is hurting me except for the fact that they are trying to detain me." NE#1 escorted the Complainant to a patrol vehicle. The Complainant protested that her arrest was unlawful and indicated she was the victim of a hit-and-run. The Complainant alleged that she was racially



profiled: “We are being racially profiled because we’re the only Black people in this situation.” The Complainant further alleged that NE#1 profiled her because the accident victim was allowed to leave. The Complainant repeatedly shouted that officers were hurting her arm. A backing officer replied, “My fingers aren’t even around your arm. It’s just placed against it.”

NE#1 gathered the Complainant's belongings from her wrecked Mustang to go with her to the hospital. As NE#1 grabbed the Complainant's purse, he saw an open bottle of alcohol on the vehicle's floorboard. WS#1 screened the Complainant's arrest before she was transported to a hospital for a blood draw.

D. Incident Reports and Use of Force Reports

OPA reviewed the related incident report, NE#1's use-of-force statement, and his chain of command's review.

NE#1's incident report was consistent with OPA's BWV review. NE#1 explained his decision to arrest the Complainant, “[the Complainant's] inability to maintain her balance, follow instructions, AOB, admitting to drinking, alcohol containers in the car, HGN and the collision made me believe she was driving while intoxicated.” OPA also reviewed WE#1 and backing officers' incident reports, including interviews with the victim and witnesses, who stated the victim turned right onto Seneca Street when the Complainant's Ford Mustang ran a red light and struck the victim's minivan.

NE#1 detailed his force applications in a Type I use of force statement. In summary, NE#1 described that he controlled the Complainant's right arm during handcuffing as she pulled away and later held her right arm during a search and when placing her inside a patrol vehicle. When NE#1 contacted the Complainant's right arm, she complained that NE#1 was hurting her.

NE#1's lieutenant and captain completed use-of-force reviews. NE#1's lieutenant concluded that NE#1's use of force was objectively reasonable, necessary, and proportional. He explained, “The force used by the involved officers was proportional to the resistance to handcuffing offered by the subject and the officer's need to keep hands on during search incident to arrest and escort to a [patrol vehicle] due to the subject's continued resistive behavior. Officer eventually modulated their force to reflect the subject's eventual cooperation.”

NE#1's captain concurred with the lieutenant, including the belief that the Complainant was injured from the vehicle collision rather than NE#1's use of force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 racially profiled her during a DUI investigation.



SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

Here, OPA did not observe NE#1 making any decisions based on the Complainant’s race. NE#1 was dispatched to a vehicle collision and found the Complainant in the driver’s seat of her vehicle. When NE#1 contacted her, the Complainant was heavily intoxicated, and NE#1 conducted a DUI investigation. The Complainant insisted that she was treated differently than the victim because she identified as Black. NE#1 observed clear signs of impairment and later arrested the Complainant. NE#1 treated the Complainant differently from the victim because she was impaired, not because of her race.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant complained of pain during her arrest.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” during tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

Here, OPA observed NE#1 using *de minimis* force while handcuffing, searching, and securing the Complainant for transport. NE#1’s use of force was reasonable, given that the Complainant initially attempted to run from him, then pulled away as NE#1 handcuffed her. NE#1 later contacted the Complainant’s arm to guide and escort her during search and transport. NE#1’s chain of command noted that NE#1 modulated his force to reflect the subject’s eventual cooperation.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**